

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>2</p> <p>3 MICHAEL W. HILL, et al., : C.A. No. 05-160 Erie Plaintiff : C.A. No. 03-323 Erie 4 : C.A. No. 03-355 Erie v. : C.A. No. 03-368 Erie 5 : C.A. No. 04-011 Erie JOHN J. LAMANNA, et al., : 6 Defendants :</p> <p>7</p> <p>8</p> <p>9 Deposition of STEPHEN HOUSLER, taken before and by Janis L. Ferguson, Notary Public in and for the Commonwealth of Pennsylvania, on Tuesday, 10 December 19, 2006, commencing at 10:01 a.m., at the offices of Knox McLaughlin Gornall &amp; Sennett, P.C., 120 West 10th Street, Erie, Pennsylvania 11 16501.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 For the Plaintiffs: Richard A. Lanzillo, Esquire 16 Knox McLaughlin Gornall &amp; Sennett, PC 120 West 10th Street 17 Erie, PA 16501</p> <p>18 For the Defendants: Michael C. Colville, Esquire, AUSA 19 Office of the United States Attorney 700 Grant Street, Suite 4000 20 Pittsburgh, PA 15219 Douglas Goldring, Esquire 21 Federal Prison Industries (UNICOR) 400 First Street NW 22 Washington, DC 20534</p> <p>23</p> <p>24</p> <p>25 Reported by Janis L. Ferguson, RPR, CRR Ferguson &amp; Holdnack Reporting, Inc.</p>	<p style="text-align: right;">Page 3</p> <p>1 STEPHEN E. HOUSLER, first having 2 been duly sworn, testified as follows:</p> <p>3</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. LANZILLO:</p> <p>6</p> <p>7 Q. Good morning, Mr. Housler.</p> <p>8 A. Good morning.</p> <p>9 Q. My name is Rich Lanzillo. I represent the 10 Plaintiffs in these related actions; Michael Hill, Leslie 11 Kelly, Kevin Siggers, Myron Ward, and Kenny Hill. I have 12 scheduled your deposition here today to ask you some 13 questions, primarily regarding conditions at the UNICOR 14 facility as it existed when the Plaintiffs were inmates in 15 FCI McKean.</p> <p>16 Before we get started, there are just a couple of 17 ground rules that I'll need to review with you. I presume 18 you have been through a deposition before and probably are 19 somewhat familiar with the process. Is that --</p> <p>20 A. No.</p> <p>21 Q. No? Oh, this is your first depo. Okay.</p> <p>22 A. I have never done one.</p> <p>23 Q. Okay. Well --</p> <p>24 A. I have been to a trial before, but I have never 25 been to a deposition.</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX</p> <p>2</p> <p>3 TESTIMONY OF STEPHEN HOUSLER</p> <p>4 Direct examination by Mr. Lanzillo . . . . . 3</p> <p>5 Cross-examination by Mr. Goldring . . . . . 45</p> <p>6 Cross-examination by Mr. Colville . . . . . 54</p> <p>7 Redirect examination by Mr. Lanzillo . . . . . 55</p> <p>8 Recross-examination by Mr. Colville . . . . . 56</p> <p>9</p> <p>10 EXHIBITS:</p> <p>11 Housler Deposition Exhibit 1 - Page 35</p> <p>12 Housler Deposition Exhibit 2 - Page 42</p> <p>13 Housler Deposition Exhibit 3 - Page 51</p> <p>14 Housler Deposition Exhibit 4 - Page 52</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 Q. Well, the procedure is really quite simple. Both 2 my questions and your answers will be transcribed by Janis, 3 our court reporter.</p> <p>4 To ensure that the transcript is clear, it's 5 important that you verbalize all of your responses, as 6 opposed to simply shaking or nodding your head. In addition 7 to that, to ensure that there's no ambiguity in the 8 transcript, if you're going to respond to one of my 9 questions in the affirmative, try to use the word yes, and 10 if you're going to, you know, respond in the negative, try 11 to say no. If you say uh-huh or huh-uh, that can be 12 somewhat unclear on the record.</p> <p>13 Most importantly, if at any time you do not 14 understand one of my questions -- and that can be, and it 15 usually is, my fault -- if my question is unclear to you, 16 simply tell me that, and I'll rephrase it. Also, if you 17 don't hear me clearly, let me know that, and I'll repeat the 18 question.</p> <p>19 If you do respond to my question, however, I will 20 assume that you both heard it and understood it. Is that 21 fair enough?</p> <p>22 A. Fair enough.</p> <p>23 Q. Very good. Would you state your full name for the 24 record.</p> <p>25 A. Stephen Eugene Housler.</p>

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1 Q. And where do you live, Mr. Housler?

2 A. I live at 3 Nookside Lane, Bradford, Pennsylvania

3 16701.

4 Q. What is the extent of your education?

5 A. I have a B.S. in business management. I had three

6 years of safety training. And Montana College of Mineral

7 Science and Technology in Butte, Montana.

8 Q. Where did you receive your Bachelor of Science

9 degree in business management?

10 A. University of Pittsburgh.

11 Q. When did you graduate from Pitt?

12 A. '92, I think.

13 Q. You indicated that you had three years of safety

14 training?

15 A. Right. I went -- I went to college out in Butte,

16 Montana from '79 to '82.

17 Q. So your safety training in Montana actually

18 predates your Bachelor of Science Degree from the University

19 of Pittsburgh.

20 A. Correct.

21 Q. And when you were attending school in Montana,

22 were you working toward a particular degree?

23 A. Yes. A safety engineering degree.

24 Q. And the name of the institution you attended, was

25 that Montana College?

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1 A. Montana College of Technology.

2 Q. And I take it you did not complete that program?

3 A. No.

4 Q. Why did you leave that program?

5 A. I -- my father had some health issues, and I had

6 to come home. He had a business. I had to come home and

7 assist him with that. So, therefore, I never returned.

8 Q. What was the nature of that business?

9 A. He worked in the oil business.

10 Q. Where are you from originally?

11 A. Bradford, Pennsylvania.

12 Q. Did you attend Bradford High School?

13 A. Yes, I did.

14 Q. When did you graduate from high school?

15 A. 1975.

16 Q. When you attended Montana College of Technology,

17 did you -- there is no pun intended here, but did you have

18 any exposure to the topic of silica dust or Perlite? Was

19 that covered in any of your safety --

20 A. I didn't have any exposure to that, no.

21 Q. Okay.

22 A. I did have some industrial hygienist courses, but

23 as far as being exposed to that, no.

24 Q. And by "exposed", I mean the subject matter. Was

25 it covered in any of your classes, discussed?

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1 A. Not that I can recall. I mean, we did -- we did

2 air monitoring and samples, and we didn't really get

3 involved in any, like, silica dust or anything like that.

4 It was just regular air monitoring.

5 Q. When you went to work at FCI McKean, were you

6 familiar with silica dust?

7 A. No.

8 Q. When did you start at FCI McKean?

9 A. '89.

10 Q. And what was your --

11 A. July of '89 I started.

12 Q. What was your initial position?

13 A. I started out as a correctional officer.

14 Q. Did you have any education or training in

15 corrections before you started in --

16 A. Yes. I worked over at the County Jail in

17 Smethport prior to that, part-time, while I was going to

18 college.

19 Q. How long did you work at the County Jail?

20 A. About -- I think approximately three years.

21 Part-time.

22 Q. And that was part-time?

23 A. Yeah.

24 Q. Were you commuting to college at that time?

25 A. I -- I went to the branch campus in Bradford.

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1 Q. Okay. Pitt-Bradford.

2 A. University of Pittsburgh, Bradford, yes.

3 Q. Okay.

4 A. I lived right there, yes.

5 Q. All right. So you didn't go to the University of

6 Pittsburgh in Oakland.

7 A. Not the main campus, no.

8 Q. Aside from the training you received while you

9 attended Montana College of Technology, did you have any

10 further safety training or education?

11 A. When you get into the safety program for the

12 Bureau of Prisons, they have initially a five-week class,

13 safety-related subjects. You attend that for five weeks.

14 I've had other new -- and every year they have an update; a

15 weekly safety training class that you attend on regulation

16 updates. I have had other numerous safety -- fire-related

17 classes, hazardous material classes I have attended,

18 compensation classes. Let me see. Incident command

19 training, asbestos-related training, lead training.

20 Q. When did you attend the hazardous material

21 classes?

22 A. I attended that up in Rochester, New York.

23 Q. When was that?

24 A. That might have been around 1995. I -- I really

25 can't recall the exact year.

<p style="text-align: right;">Page 9</p> <p>1 Q. The five-week training class that you received</p> <p>2 from the Bureau of Prisons, I think you indicated that you</p> <p>3 went through that training when you became a safety officer?</p> <p>4 A. When you get hired on in the safety department,</p> <p>5 yes, everybody goes through that five-week training class.</p> <p>6 Q. And when would you have attended that class? When</p> <p>7 did you attend that class?</p> <p>8 A. That would have been around 1993.</p> <p>9 Q. And where was that class --</p> <p>10 A. That class was held in Denver.</p> <p>11 Q. Denver?</p> <p>12 A. At our training center. We have a training center</p> <p>13 there. It was held there.</p> <p>14 Q. Aside from the Bureau of Prisons training classes</p> <p>15 and the various updates and programs that you received</p> <p>16 through the Bureau of Prisons -- and I understand you may</p> <p>17 not have named all of them.</p> <p>18 A. Right.</p> <p>19 Q. You worked from memory. But aside from what you</p> <p>20 received in-house through the prison system, have you</p> <p>21 received any other safety training other than what we have</p> <p>22 talked about?</p> <p>23 A. No. Just what we have talked about there.</p> <p>24 Q. What is your current employment?</p> <p>25 A. Position?</p>	<p style="text-align: right;">Page 11</p> <p>1 the process of changing over to a plastics factory, where</p> <p>2 they are manufacturing plastic trays, silverware, plastic</p> <p>3 cups; those type of items.</p> <p>4 Q. When did the UNICOR facility at FCI McKean stop</p> <p>5 making furniture?</p> <p>6 A. Well, they -- they stopped totally probably about</p> <p>7 nine months ago. As far as their final shipments of</p> <p>8 everything out, moving all their equipment out, the</p> <p>9 woodworking equipment out and so forth.</p> <p>10 Q. Who is your immediate supervisor?</p> <p>11 A. My immediate supervisor currently now is Cherry</p> <p>12 Robare.</p> <p>13 Q. And what is Ms. Robare's position?</p> <p>14 A. Ms. Robare is the associate warden of operations.</p> <p>15 Q. And how long has she held that position?</p> <p>16 A. Three years she's been at FCI McKean.</p> <p>17 Q. And who was your supervisor prior to Ms. Robare?</p> <p>18 A. Prior to that, I was supervised by Monica</p> <p>19 Rectenwald. She is currently the executive assistant.</p> <p>20 Q. And what was her position at the time she was your</p> <p>21 supervisor?</p> <p>22 A. Executive assistant.</p> <p>23 Q. Do you have any staff that answer to you?</p> <p>24 A. I have two staff members who work under me in my</p> <p>25 department.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. Yes.</p> <p>2 A. I'm the safety manager at FCI McKean.</p> <p>3 Q. And how long have you held that position?</p> <p>4 A. 12 years.</p> <p>5 Q. So since about 1994?</p> <p>6 A. Right.</p> <p>7 Q. And what are your responsibilities as the safety</p> <p>8 manager at FCI McKean?</p> <p>9 A. We're -- we're responsible for monitoring the</p> <p>10 safety programs; make sure we're within policy, as like OSHA</p> <p>11 policy, EPA policy. We conduct regular safety sanitation</p> <p>12 inspections. We have some weekly ones we do, we have</p> <p>13 monthlies we are required to do. We are responsible for</p> <p>14 monitoring the compensation program. And we're just --</p> <p>15 we're responsible for the overall safety of both staff and</p> <p>16 inmates.</p> <p>17 Q. Would it be fair to say that you are the person</p> <p>18 principally responsible for providing a safe and healthful</p> <p>19 environment for inmates and staff at the facility?</p> <p>20 A. Yes, that would be correct.</p> <p>21 Q. And that would include the UNICOR facility?</p> <p>22 A. Correct.</p> <p>23 Q. What is the status of the UNICOR facility at FCI</p> <p>24 McKean? It's no longer making furniture, is it?</p> <p>25 A. It's no longer a furniture factory. They are in</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. What are their positions?</p> <p>2 A. The one position is a safety specialist, and the</p> <p>3 other position is a safety specialist trainee.</p> <p>4 Q. Has that been the structure since, let's say,</p> <p>5 2002?</p> <p>6 A. Yes. It hasn't been the same trainee.</p> <p>7 Q. Right.</p> <p>8 A. It was a different one at --</p> <p>9 Q. I understand the personnel may have changed, but</p> <p>10 in terms of the staffing structure, with you</p> <p>11 supervising two --</p> <p>12 A. Yes.</p> <p>13 Q. -- individuals --</p> <p>14 A. It's always been two, yes.</p> <p>15 Q. Back in the time frame of 2001, 2002, 2003,</p> <p>16 approximately how many inmates worked in the UNICOR</p> <p>17 facility?</p> <p>18 A. Probably 150 to 200. They ran two shifts.</p> <p>19 Q. What was the size of the overall inmate population</p> <p>20 at FCI McKean?</p> <p>21 A. Approximately 1400. That's in our main</p> <p>22 institution. We have two institutions there.</p> <p>23 Q. How would an inmate become part of the UNICOR</p> <p>24 program, actually get to work in the UNICOR facility?</p> <p>25 A. They have to send a cop-out in, they call it; a</p>

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<p style="text-align: right;">Page 13</p> <p>1 request to the staff member down there to be placed on the</p> <p>2 UNICOR list for employment. And the list is pretty long.</p> <p>3 And they would just wait until they were called to start</p> <p>4 working down there.</p> <p>5 Q. And was there any discretion in terms of who got</p> <p>6 the position, or was it just a matter of seniority or order</p> <p>7 on the list?</p> <p>8 A. If you had prior UNICOR experience from other</p> <p>9 UNICORs at other facilities, you were considered priority.</p> <p>10 So you would be hired before somebody who didn't have prior</p> <p>11 UNICOR experience.</p> <p>12 Q. Were there any requirements or considerations</p> <p>13 regarding the inmate's behavior or other factors that might</p> <p>14 influence how quickly an inmate would get a position at</p> <p>15 UNICOR?</p> <p>16 A. No.</p> <p>17 Q. So good behavior wouldn't get you quicker</p> <p>18 consideration?</p> <p>19 A. No.</p> <p>20 Q. Were those sought-after positions?</p> <p>21 A. UNICOR is a very sought-after position. They pay</p> <p>22 the most.</p> <p>23 Q. Among the jobs you can have within the prison</p> <p>24 facility, was UNICOR one of the higher skill areas?</p> <p>25 A. Yeah, it's higher -- highly skilled. You're</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Did you know that the dust included mineral fiber?</p> <p>2 A. Hum-um.</p> <p>3 Q. That's a no?</p> <p>4 A. No.</p> <p>5 Q. You have --</p> <p>6 A. I'm sorry.</p> <p>7 Q. That's all right. Did you know that the dust</p> <p>8 included silica dust?</p> <p>9 A. No.</p> <p>10 Q. Did you know that the dust included Perlite,</p> <p>11 P-E-R-L-I-T-E?</p> <p>12 A. No.</p> <p>13 Q. But what you did know is that cutting or sawing</p> <p>14 would release some sort of dust in the vicinity of the</p> <p>15 operator.</p> <p>16 A. Yes. Some dust is released anytime you do any</p> <p>17 type of cutting.</p> <p>18 Q. Right. Prior to the OSHA inspection, what did you</p> <p>19 know about the potential health impacts or hazards</p> <p>20 associated with the dust created by the use or cutting of</p> <p>21 Micore board?</p> <p>22 A. Can you repeat that.</p> <p>23 Q. Sure. Prior to the commencement of the OSHA</p> <p>24 inspection on April 16th, 2003, what did you know about the</p> <p>25 potential health effects or hazards created by the dust</p>
<p style="text-align: right;">Page 14</p> <p>1 learning to operate equipment. It's -- of course, the other</p> <p>2 details, you're operating some equipment, but not the type</p> <p>3 of equipment you would be operating in UNICOR.</p> <p>4 Q. So no prior factory experience was required, I</p> <p>5 take it, to work at UNICOR?</p> <p>6 A. No.</p> <p>7 Q. Among the materials handled by inmates, am I</p> <p>8 correct that there was materials known as Micore board?</p> <p>9 A. Yes.</p> <p>10 Q. For a convenience time reference here, let me just</p> <p>11 direct you to the period prior to the OSHA inspection, which</p> <p>12 I think commenced on or about April 16th, 2003. And let me</p> <p>13 ask you, prior to that OSHA inspection, what did you know</p> <p>14 about Micore board? Personally.</p> <p>15 A. Personally? I -- I knew that it -- it did create</p> <p>16 some dust. I didn't -- I didn't know a whole lot about it.</p> <p>17 I did review the Material Safety Data Sheet. I saw no</p> <p>18 issues, really, with it.</p> <p>19 Q. So you knew that when the material was handled --</p> <p>20 for example, when it was sawed, it would fracture the</p> <p>21 material, obviously, and create dust?</p> <p>22 A. Create small amounts of dust, yes.</p> <p>23 Q. And did you know the composition or constituent</p> <p>24 parts of that dust?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 16</p> <p>1 generated by the cutting of Micore board?</p> <p>2 A. I didn't really know of many health hazards</p> <p>3 associated with it. I didn't know.</p> <p>4 Q. Did you know any health hazards associated with</p> <p>5 it?</p> <p>6 A. No.</p> <p>7 Q. Did you know whether any materials in the dust</p> <p>8 were a potential carcinogen?</p> <p>9 A. Hum-um.</p> <p>10 Q. That's a no?</p> <p>11 A. No.</p> <p>12 Q. Did you know that the dust could cause silicosis?</p> <p>13 A. No.</p> <p>14 Q. Did you know whether the dust could cause</p> <p>15 autoimmune diseases?</p> <p>16 A. No.</p> <p>17 Q. Did you know whether the dust could cause skin</p> <p>18 irritation?</p> <p>19 A. No.</p> <p>20 Q. Respiratory dysfunction?</p> <p>21 A. No.</p> <p>22 Q. Well, had you read the MSDS sheet for Micore</p> <p>23 board?</p> <p>24 A. I reviewed it, yes.</p> <p>25 Q. After reviewing -- when did you review the MSDS</p>

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1 sheet?

2 A. I reviewed it after we got a couple complaints

3 from the OSHA.

4 Q. Had you reviewed the MSDS sheet for Micore board

5 prior --

6 A. No.

7 Q. -- to OSHA's inspection?

8 A. No.

9 Q. Who maintained the MSDS sheets?

10 A. We maintained some in our office, and they

11 maintain them in the UNICOR factory also.

12 Q. Did your responsibilities as the safety manager

13 include review of MSDS sheets?

14 A. Yeah, we review them.

15 Q. Is there any reason why you didn't review the MSDS

16 sheet for Micore board?

17 A. I didn't really see any health hazards opposed

18 by -- or caused by Micore board, so I really didn't review

19 it very thoroughly.

20 Q. Well, again, prior to the OSHA inspection, had you

21 reviewed it at all?

22 A. No.

23 Q. Had you observed cutting operations involving

24 Micore board; cutting and sawing operations?

25 A. Yes.

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1 Q. And you had observed those cutting and sawing

2 operations of Micore board prior to the OSHA inspection, I

3 assume.

4 A. Right, yes.

5 Q. So you knew that that Micore board generated some

6 amount of dust?

7 A. Some dust, yes.

8 Q. All right.

9 A. But that dust was taken care of with our

10 ventilation and our system that collect -- collects dust.

11 Q. Well, when an inmate would use, let's say, a table

12 saw --

13 A. Right.

14 Q. -- with a piece of Micore board or one or more

15 pieces of Micore board, and they would push that Micore

16 board through that saw, not all of the dust would go into

17 the ventilation system, would it?

18 A. Majority of the dust went into the dust-collecting

19 system. Yes, it did.

20 Q. Okay. But you knew not all of it.

21 A. Not all of it, no.

22 Q. And, in fact, did you observe that after the

23 operation of a saw, there would be dust in and around the

24 area of operation of the saw?

25 A. There would be a small amount, yes.

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1 Q. And there would be dust on the clothing and on the

2 person of the inmate too, wouldn't there?

3 A. Possible.

4 Q. Did you observe that?

5 A. I didn't observe it, no.

6 Q. Did you ever see the inmates blowing dust off

7 themselves using the pneumatic or air pressure --

8 A. No.

9 Q. Did you ever see dust in the hair of the --

10 A. No.

11 Q. -- inmates? How often were you present on the

12 facility floor at UNICOR?

13 A. I'm -- I go down to the UNICOR factory at least

14 three times a week. And if I -- if I'm not down there, I'm

15 not there, I make sure one of my staff goes down there and

16 walks around, monitors it.

17 Q. Were there ever any problems with the functioning

18 of the ventilation system that you have described removing

19 the dust from the saws and other machines that cut the

20 Micore board?

21 A. The dust collection system functioned all the

22 time. We had a maintenance man who monitored it, and if

23 there was any issues with it, he corrected them immediately.

24 I was never aware of any problems with the dust-collecting

25 system. It functioned properly at all times.

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1 Q. Prior to the OSHA inspection beginning on

2 April 16, 2003, did you or the facility itself have any

3 policies in place or procedures in place regarding the use

4 of respirators or masks when utilizing table saws in cutting

5 Micore board?

6 A. We didn't use respirators in our UNICOR factory

7 because we had our dust collection system. We did have

8 nuisance dust masks that were available for inmates out of

9 our tool room there. If they wanted to wear one, they could

10 request to wear one, and they were given a nuisance dust

11 mask.

12 Q. Were inmates instructed to wear a mask when

13 utilizing the Micore board?

14 A. No.

15 Q. So they weren't required to wear a mask if --

16 A. No. That was strictly their choice.

17 Q. Was there any training provided to inmates

18 regarding any potential hazards associated with the cutting

19 or sawing of Micore board?

20 A. Their foremen are required to teach them how to

21 run the machines, any training. I have an initial -- when

22 the inmates first arrive to the class, we have an A & O

23 class, and I do some safety training, and I do some lecture

24 on different safety issues, and inmates are trained there,

25 yes, by me. But it's the supervisors' responsibility to do

5 (Pages 17 to 20)

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1 the initial training when they are hired in UNICOR.

2 Q. What responsibility, if any, do you have relative  
3 to the supervisors at the UNICOR facility?

4 A. We have annual training every year, and I train  
5 them on different safety issues, and they are required to  
6 train -- attend that.

7 Q. So you would be the principal source of their  
8 training in-house as far as the procedures and materials in  
9 use at UNICOR?

10 A. Correct.

11 Q. Now, would it be accurate to say that you did not  
12 provide any training to any inmates regarding any potential  
13 health hazards associated with Micore board?

14 A. That's correct.

15 Q. And the same would be true relative to supervisors  
16 at the UNICOR facility. You did not provide any training to  
17 those individuals regarding potential health hazards  
18 associated with Micore board.

19 A. Correct.

20 Q. All right. And that would necessarily be true  
21 because at least with respect to the MSDS sheet, you hadn't  
22 reviewed it, at least prior to the OSHA inspection.

23 A. Correct.

24 Q. All right. Did any inmate or staff member ever  
25 complain about health problems or health concerns regarding

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1 A. I have no documentation that came to me, no. And  
2 I'm down in that UNICOR factory at least three or four times  
3 a week walking around. And if you -- if you think that I'm  
4 going to expose myself or any of the other 18 other staff  
5 down there or any of the inmates down there to a hazardous  
6 environment, you're wrong. I'm not going to do that.

7 Q. You mentioned that you have no documentation  
8 regarding anything from Robin. But did any of the staff  
9 members ever indicate to you, even verbally, that Robin  
10 Bevevino had raised concerns about the cutting of Micore  
11 board?

12 A. No.

13 Q. The dust mask that you mentioned, do you know if  
14 they are NIOSH approved?

15 A. A nuisance dust mask is not considered a  
16 respirator, and they are not NIOSH approved, no.

17 Q. Was there any policy or procedure in place at any  
18 time at the UNICOR facility regarding proper clothing to be  
19 worn when working with Micore board?

20 A. No.

21 Q. So --

22 A. Inmates wore their basically khaki clothes,  
23 long-sleeved shirts, their khaki pants, their safety shoes.  
24 That's what they were required -- required to wear when they  
25 reported to work.

Page 22

1 Micore board?

2 A. I never received a complaint from anybody  
3 concerning Micore board. And I make it very clear in my A &  
4 O lessons to inmates, if they have a problem that's related  
5 to safety, they need to contact me and let me know what  
6 their problem is. I will investigate it, and if there is an  
7 issue, I will correct the problem. No one ever came to me  
8 if they had a problem with the Micore board and the air  
9 monitoring. Had they come to me, I would have checked it  
10 out.

11 Q. Did you ever hear indirectly about any health  
12 concerns or potential health problems associated with Micore  
13 board?

14 A. No. Nobody ever mentioned it to me or came to me.

15 Q. Did you ever learn from any source that, for  
16 example, Robin Bevevino had problems regarding --

17 A. Robin Bevevino never approached me. I had other  
18 dealings with Robin Bevevino, but he never approached me as  
19 far as any type of issue with the sawing, with the Micore  
20 board. He had some worker compensation injuries, and that's  
21 what I dealt with Robin Bevevino. That was it.

22 Q. Did anyone else on the staff ever express to you,  
23 verbally or in writing, that Robin Bevevino had raised  
24 concerns about hazardous substances created by the cutting  
25 of Micore board?

Page 24

1 Q. Is --

2 A. Inmates were allowed to remove and wear T-shirts  
3 in the summer when it was much more hotter. That was their  
4 choice.

5 Q. Mr. Housler, when you mentioned the inmates  
6 reporting to work -- in other words, when they would come  
7 from other parts of the prison, their cells, their  
8 residence, they would report in their work clothes?

9 A. Correct.

10 Q. And then when they would leave, they would go back  
11 to their cells or their residence in those same work  
12 clothes?

13 A. Um-hum.

14 Q. Yes?

15 A. Inmates were also required to wear -- coveralls  
16 were available too.

17 Q. Let me just back up for a second, because you used  
18 an "um-hum", and I just want to make sure --

19 A. Yes. Yes.

20 Q. Okay. So they would -- they would leave in the  
21 same clothes that they reported in.

22 A. Yes.

23 Q. All right. And go back to their residence.

24 A. (Witness nods head.)

25 Q. Yes?

6 (Pages 21 to 24)

Page 25

1 A. Yes.

2 Q. Now, they had the option of wearing coveralls?

3 A. Yes. Coveralls were available.

4 Q. And when did coveralls become available?

5 A. They were available all the time down there.

6 Q. Were they -- were inmates required to wear

7 coveralls?

8 A. They weren't required to, no.

9 Q. Were they encouraged or trained to wear coveralls?

10 A. That was their decision, whether they wanted to

11 wear them or not. We didn't force them to wear them. That

12 was their decision.

13 Q. Was there any explanation provided regarding the

14 wearing of coveralls, other than to tell the inmate that

15 they are available?

16 A. No.

17 Q. They weren't required to wear long-sleeved shirts

18 that --

19 A. They weren't required to, no. If they did, they

20 had to be buttoned, and they had to be -- they couldn't be

21 loose. They had to be tight-fitting.

22 Q. To avoid equipment hazards.

23 A. To avoid getting caught in a piece of equipment or

24 something, yes.

25 Q. Were goggles provided?

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1 A. Safety glasses are mandatory down there, yes.

2 Q. And those are safety glasses -- I'm holding --

3 A. Approved, yes.

4 Q. They weren't tight-fitting goggles, though?

5 A. No, they weren't tight-fitting goggles. Regular

6 safety glasses.

7 Q. They didn't have a strap around to pull tight to

8 the head?

9 A. No.

10 (Discussion held off the record.)

11 Q. Any special laundry procedures --

12 (Brief interruption in proceedings.)

13 Q. Mr. Housler, were there any procedures in place

14 regarding how clothing worn in the UNICOR facility was to be

15 handled for laundry purposes?

16 A. Washers and dryers were available in the housing

17 units for the inmates to launder their own clothes. And we

18 also have a laundry -- laundry -- institution laundry where

19 if inmates can't do their own laundry, they can take them

20 there and they can be done by staff and inmate detail there.

21 Q. But as far as someone working in the UNICOR

22 facility, no one was required to launder their work clothes

23 separately from the general clothing of the inmates --

24 A. No. None of our details are required to do that.

25 Q. Let me ask you about cleanup policies and

Page 27

1 procedures. To whatever extent dust was generated by sawing

2 or other operations involving Micore board, how would that

3 dust be cleaned up? At the end of a shift or periodically

4 throughout the shift?

5 A. If there was dust on the top of machines, they

6 would have a little dust brush. They would sweep it off on

7 the floor. Use Shop-Vacs. We did, underneath machines,

8 where it was tough to get areas, we did use some air hose --

9 hoses. The air lines had regulators on, as our policy

10 requires, and it restricts the PSI to 30 pounds.

11 Q. 30 pounds?

12 A. They did use some -- some air underneath. But

13 they swept it off. And they could sweep it right into the

14 dust-collecting system itself while it was running on the

15 piece of machinery. Some of our machines, our CNC saws,

16 they had hoses that came down where the suction system was

17 connected into it, and that's how they cleaned some of the

18 dust and sawdust off, yes.

19 Q. The vacuums, were those like Shop-Vac types?

20 A. Shop-Vacs, yes.

21 Q. When did the Shop-Vacs --

22 A. We had them down there all along.

23 Q. Were those filtered Shop-Vacs, do you know?

24 A. I don't think so, no. Just regular Shop-Vacs.

25 Q. To your knowledge, none of the inmates complained

Page 28

1 about respiratory problems or skin irritation?

2 A. No inmates ever came to me about respiratory

3 problems or skin irritations.

4 Q. And it's also your testimony that you didn't hear

5 about that through other sources?

6 A. No.

7 Q. I take it your answer is no, I didn't hear about

8 that from other sources.

9 A. I didn't hear about that from other sources, no.

10 Q. Prior to the OSHA inspection in April of 2003,

11 what did you know about Lokweld? Lokweld 860/861.

12 A. Lokweld glue was used in our spray booth for

13 gluing the laminate onto the particle board.

14 Q. Was it used anywhere else?

15 A. It was used in our special projects area for

16 special projects we did for some of the institution

17 departments. It was used in small amounts. If they needed

18 it, they used a brush to brush it on the piece of wood that

19 they were gluing.

20 Q. So in the special projects area, that would be

21 outside of the spray booth?

22 A. Um-hum.

23 Q. Yes?

24 A. Yes. I'm sorry. Yes.

25 Q. And to apply the Lokweld glue, they would take a

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 brush and --</p> <p>2 A. Use -- use a paint brush, spread it on there,</p> <p>3 yeah.</p> <p>4 Q. What, dip it into the can and then --</p> <p>5 A. Um-hum. Dip it into a can they had of it, yes.</p> <p>6 Q. And how large were the containers or cans of the</p> <p>7 Lokweld?</p> <p>8 A. The -- the ones for the spray booth?</p> <p>9 Q. No, for the --</p> <p>10 A. They were 55-gallon drums that were stored in a</p> <p>11 flammable [sic] cabinet.</p> <p>12 Q. What about in the area of the special projects?</p> <p>13 A. When they were done using it, there was a smaller</p> <p>14 flammable cabinet that they stored in there.</p> <p>15 Q. So if they were using it in the special projects</p> <p>16 area, they would open up a 55-gallon drum and then --</p> <p>17 A. Oh, no. They had it in a smaller -- smaller</p> <p>18 gallon container, like.</p> <p>19 Q. And have you ever read the MSDS for the Lokweld?</p> <p>20 A. Yes.</p> <p>21 Q. When was the first time that you read the MSDS</p> <p>22 sheet for the Lokweld?</p> <p>23 A. When they first started using it.</p> <p>24 Q. And when was that?</p> <p>25 A. Pretty much all along. When the factory opened</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. And who would have been the foreman at the time?</p> <p>2 A. I can't really say who the foreman was. They</p> <p>3 rotate who they supervised down there, so I -- I really</p> <p>4 can't say who the foreman was. But staff were aware that</p> <p>5 the Lokweld was very flammable, and they were -- they were</p> <p>6 aware of that, and they knew -- and we did handle it</p> <p>7 properly. We maintained it in flammable cabinets. So they</p> <p>8 were aware of the hazards associated with the Lokweld glue,</p> <p>9 as were the inmates.</p> <p>10 Q. But the inmates had not received any training in</p> <p>11 that area, had they?</p> <p>12 A. Well, their supervisor is required to train them.</p> <p>13 They are aware of it. They are required to make them aware</p> <p>14 of any hazards working with it.</p> <p>15 Q. Is it fair to say you didn't provide any inmates</p> <p>16 with training in --</p> <p>17 A. I didn't provide any training, no.</p> <p>18 Q. And do you have any personal knowledge that any</p> <p>19 supervisor actually did provide training regarding --</p> <p>20 A. No.</p> <p>21 Q. -- Lokweld or the Micore board?</p> <p>22 A. No.</p> <p>23 Q. As part of the OSHA citations, there was a</p> <p>24 Citation No. 2, Item 1, which stated, quote, "Employees who</p> <p>25 wear voluntary use respirators were not provided with</p>
<p style="text-align: right;">Page 30</p> <p>1 up, we started using it, yes.</p> <p>2 Q. When did the factory open? 1989?</p> <p>3 A. Yeah, right.</p> <p>4 Q. Did you provide any special training to inmates</p> <p>5 regarding specifically the Lokweld product?</p> <p>6 A. No.</p> <p>7 Q. As part of the citations issued by OSHA after its</p> <p>8 inspection, there was a Citation 2, Item 3, which</p> <p>9 referenced, quote, "Employee training did not include the</p> <p>10 physical and health hazards of the chemicals in the work</p> <p>11 area." It further stated, quote, "FCI McKean, Hazard</p> <p>12 Communication Program: Personnel were potentially exposed</p> <p>13 to a variety of chemicals that included, but were not</p> <p>14 limited to, Micore board and Lokweld 860/861. The hazard</p> <p>15 communication training program did not include a review of</p> <p>16 the physical and health hazards of the specific chemicals</p> <p>17 utilized in the workplace. As a result, personnel were not</p> <p>18 provided with effective information to ascertain the</p> <p>19 measures needed to protect themselves from the chemicals'</p> <p>20 physical and health hazards." And there's a citation to</p> <p>21 Federal Regulation 29 CFR 1910.1200(h)(2)(ii).</p> <p>22 My question is, who would have been responsible</p> <p>23 within FCI McKean and UNICOR for this area of safety</p> <p>24 compliance; the --</p> <p>25 A. My -- myself and the foreman.</p>	<p style="text-align: right;">Page 32</p> <p>1 training on the basic advisory information contained in the</p> <p>2 29 CFR 1910.134 Appendix D." It goes on to state, "UNICOR</p> <p>3 Factory/Respirator Program: Personnel did not receive</p> <p>4 training on the information noted," in the regulation I just</p> <p>5 cited. "These personnel utilized the 3M 8500 Comfort Mask."</p> <p>6 Would that also have been an item within the scope</p> <p>7 of your responsibility?</p> <p>8 A. Yes. If they are wearing them, yes.</p> <p>9 Q. Now, there are quite a number of noted violations</p> <p>10 and citations in the OSHA report. Rather than go through</p> <p>11 each one of them, would it be fair to say that all of these</p> <p>12 safety issues would have fallen within the scope of your</p> <p>13 responsibilities?</p> <p>14 A. Yes.</p> <p>15 Q. Prior to the OSHA inspection, were any air quality</p> <p>16 tests performed at the facility?</p> <p>17 A. Yes. We had Microbac Laboratories come in and do</p> <p>18 some air monitoring.</p> <p>19 Q. And when did that occur?</p> <p>20 A. I'm not sure of the exact date.</p> <p>21 Q. Other than the --</p> <p>22 A. Can I look at my notes?</p> <p>23 Q. Sure.</p> <p>24 A. I might have it written in my notes.</p> <p>25 Q. Yes.</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 A. July 31st, '01 they came in and did air monitoring 2 for us. Prior to that, we didn't have any. 3 Q. What prompted that air testing? 4 A. We had got another -- a complaint from OSHA, a 5 written complaint from OSHA, another one, and I recommended 6 to our factory manager and our -- the associate warden of 7 operations that we have some type of air monitoring done to 8 assure that we were within policy and air quality standards. 9 And I might say, that was a battle to get it done. 10 Q. And how so? 11 A. I just had to -- I had to be real firm to get it 12 done. I got some opposition to it. But I stood -- stood 13 firm on -- firm on it. I said that was our best way to 14 prove that we -- our air quality and our standards were 15 where they needed to be in the factory. And I finally 16 convinced the staff that were against it to do it. 17 Q. Who opposed the air testing? 18 A. The supervisor of industries. 19 Q. Who was that? 20 A. Mrs. Forsyth. 21 Q. Did she tell you why? 22 A. I think -- I think she didn't really want to spend 23 the money. She thought our air quality was fine as it was. 24 And we felt that -- she felt that our dust collection system 25 was doing a sufficient job as it was. So --</p>	<p style="text-align: right;">Page 35</p> <p>1 (Discussion held off the record.) 2 Q. Mr. Housler, I'm showing you a document that we'll 3 mark as your Deposition Exhibit 1. 4 MR. LANZILLO: And I will make photocopies for 5 counsel. 6 (Housler Deposition Exhibit 1 7 marked for identification.) 8 Q. This is a document that was produced to us by 9 OSHA. I'm asking you, have you ever seen Exhibit 1 prior to 10 today? 11 A. No. No, I have never seen this. 12 Q. Do you see the handwritten narrative on the first 13 page of Exhibit 1? 14 A. Uh-huh. Yes. 15 (Discussion held off the record.) 16 (Recess held from 10:56 a.m. till 11:00 a.m.) 17 Q. Examining Exhibit 1, Mr. Housler, you have already 18 indicated that you haven't seen this document prior to 19 today. Do you recognize the handwriting? 20 A. No. 21 Q. Do you have any knowledge as to who authored this 22 document? 23 A. Who wrote it? 24 Q. Yes. 25 A. No.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Did anyone else oppose the testing? 2 A. My associate warden at the time was Cindy 3 Billisits. She -- she was a little opposed to it too, and 4 she was on Miss Forsyth's side. But after we talked and I 5 sent her an e-mail that -- how I was very opposed to it, 6 they wanted to send this one report up to OSHA, and it -- it 7 didn't meet the standards that I felt we needed to, to prove 8 that our quality was where it should be, and I sent her an 9 e-mail, and I told her what I felt, and I told her I would 10 not support the information that they wanted to send. And 11 if they wanted to send that information to OSHA, they could 12 contact the OSHA compliant officer and send it themselves. I 13 refused to lower the standards of my department and make 14 myself look foolish by sending a report up like that. And 15 then they finally woke up, and we did the air monitoring. 16 Which we should have done right from the beginning. 17 Q. The air monitoring performed by Microbac in 2001, 18 where was the sampling conducted? Where did they set up the 19 air sampling units? 20 A. Oh, boy. It was -- it was set up at different 21 pieces of equipment, at machinery in there. The large table 22 saws, the routers, I think the CNN -- the CNC they were set 23 up. They were set up at different areas throughout the 24 factory so we could get an overall reading of the total air 25 quality.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. The narrative -- 2 A. I have -- suspect who wrote it, but I don't know, 3 no. 4 Q. Who do you suspect wrote it? 5 A. Probably the compliance officer from OSHA who was 6 in to do the inspection, I would say. 7 Q. The hazard description/location here states, "The 8 factory is processing Micore board with a power saw and no 9 respirators are being furnished --" it says actually "being 10 furnish", but I think they meant to say furnished -- "to 11 staff or inmates. One of the saws has a Shop-Vac on it for 12 dust collection, and the dust is circulating all over the 13 factory. BOP staff and inmates are receiving irritation to 14 eyes and skin and complaining of being congested. Inmates 15 are also smoking in the vicinity. When cleanup occurs, air 16 hoses are used to push the debris away." 17 My question is: Do you have any reason to believe 18 that the narrative provided in Exhibit 1 is inaccurate or 19 was inaccurate as of April of 2003? 20 A. Absolutely it's inaccurate. 21 Q. What parts do you disagree with? 22 A. Number one. Respirators were not required to be 23 used because we didn't -- we didn't have an air quality 24 issue. 25 Q. But it would --</p>

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1 A. Number one.

2 Q. Let me just ask you, though --

3 A. The dust-collecting system was -- was collecting

4 the dust at the point of operations of all pieces of

5 equipment. Every piece of equipment we had was hooked into

6 the dust-collecting system. We had two dust-collecting

7 systems. They -- they -- they collected -- their rating was

8 34,000 cubic feet per minute. So they were doing -- and we

9 had five machines hooked into one system. I think the -- I

10 think 12 into the other one. The five that were hooked into

11 the one were -- were drawing 9100 cubic feet per minute.

12 That left us with, what, 20 -- 24 -- 20-some thousand. The

13 other one was a little over 11,000. That left us with

14 around 13,000 cubic feet of air.

15 Whenever we buy a piece of equipment, the

16 manufacturer sends you specifications for the minimal amount

17 of cubic feet per air you need to draw on that piece of

18 equipment. We are well above what was required to -- to

19 handle those pieces of equipment and to collect the dust

20 system. Our dust collection system was so strong, we had --

21 we lost tools in it. We had crescent wrenches,

22 screwdrivers, and tape measures get sucked up in it. That's

23 how strong it was.

24 So I'd say it's doing its job, if it will suck a

25 wrench up in it. So I have to disagree with that. Number

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1 one.

2 Q. Okay. Anything else?

3 A. Number two, I had mentioned about the cleanup.

4 When they cleaned up, they used a brush on top, swept the

5 dust in the brush collection. They did utilize hoses

6 underneath the piece of equipment in hard-to-reach areas.

7 Q. How about --

8 A. Smoking, we had a smoking area --

9 Q. Let me stop you for a second. Hold on for a

10 second. Did they use brooms on the floor?

11 A. They did use brooms to push -- yes, sweep stuff

12 into piles.

13 Q. Go ahead.

14 A. Smoking, yes, we had a smoking area in the

15 factory, because inmates were not allowed to leave the

16 factory to go out and smoke. So we had a smoking area to

17 accommodate them. We now do not, because we are a

18 nonsmoking institution. We have since quit smoking.

19 As far as walking through there, eye irritation,

20 skin irritation, my eyes were never irritated when I walked

21 through there, and I was down there all the time. So I

22 don't believe that for one minute. Eye irritation.

23 Skin irritation, the guys working with the Micore

24 board, maybe they did have it, but nobody ever reported it

25 to me. If you don't report something to me, I can't take

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1 care of the issue. You know what I mean?

2 Q. Now, you were down there -- you or one of -- a

3 member of your staff was there, what, three times a week,

4 approximately?

5 A. At least.

6 Q. And how long would you typically stay in the

7 facility?

8 A. I'm down there a good hour or more. Plus, I have

9 to stand mainline every day when we do feed the inmates; a

10 mandatory hour. If an inmate has a problem, all they have

11 to do is approach me and say, hey, I got a problem down

12 here; I have -- I'm getting irritation from working with a

13 certain project. I'd go down and check it. Not one inmate

14 or staff approached me and said that to me.

15 Q. What is mainline?

16 A. Mainline is when we feed them lunch and dinner.

17 What else do you want -- let me read this. I don't -- I

18 don't know where that was, where the saw had a -- dust

19 collecting was used; a Shop-Vac. I don't know where that

20 is. I never saw that.

21 Another thing, if inmates have an injury, a

22 work-related injury, they have a compensation program, same

23 as staff does. All they have to do is they go to health

24 services, they send the initial injury report. I have some

25 reports that I send to their supervisor. Their supervisor

Page 40

1 fills it out, sends it back to me. And if I had got a

2 report from an inmate who went to health service that said

3 they have an irritation down there from working with the

4 Micore board, I would have went down and checked it out and

5 talked to the supervisor and asked them if there was an

6 issue.

7 Q. How would those reports get to you?

8 A. They come from health services. Initial injury

9 report. Health services does an evaluation if an Inmate has

10 an injury, whether it's work-related, nonwork-related. They

11 send me the work-related. There's a box on there,

12 work-related, nonwork. They check the work-related one,

13 they send it to me. I, in turn, send some paperwork to

14 their supervisor to complete, and they send it back to me,

15 and we review them. And if there is an issue, we'll check

16 it out.

17 Q. Have you ever received a report from health

18 services, whether related to Micore board or not, indicating

19 that an inmate had any type of a chronic irritation or a

20 respiratory problem?

21 A. No.

22 Q. I mean, I assume that if someone showed up at

23 health services with a -- you know, a broken arm or a

24 mangled finger and said, yeah, I was using a machine and got

25 caught, and I injured myself, that type of report at least

<p style="text-align: right;">Page 41</p> <p>1 should be referred to you.</p> <p>2 A. Absolutely. It will be, and we'll do an</p> <p>3 investigation. I mean, if somebody breaks their arm in a</p> <p>4 machine, we're going to go down and check it out. We're</p> <p>5 going to take pictures. We're required to do an</p> <p>6 investigation.</p> <p>7 Q. Have you ever received any reports of that type of</p> <p>8 a traumatic injury?</p> <p>9 A. From UNICOR?</p> <p>10 Q. Yes.</p> <p>11 A. Yeah, we've had a couple traumatic injuries down</p> <p>12 there that we have investigated. Yes.</p> <p>13 Q. Have you ever investigated any nontraumatic</p> <p>14 injuries, ones like respiratory irritation, skin irritation,</p> <p>15 eye irritation, anything of that nature?</p> <p>16 A. No, I never had a complaint. But I'll tell you</p> <p>17 one complaint I did receive from an inmate. We were doing</p> <p>18 some construction work out by the -- the main door to</p> <p>19 UNICOR, and we had some fence up. We had to put some fence</p> <p>20 up, and we used cables, the nylon cable ties to hook it to</p> <p>21 the post.</p> <p>22 Q. Um-hum.</p> <p>23 A. And some inmate came to me from UNICOR and said,</p> <p>24 hey, when we walk out of there, the ties are sticking out;</p> <p>25 they are right at eye level, and I almost poked my eye with</p>	<p style="text-align: right;">Page 43</p> <p>1 was reprinted, it came out with a new date?</p> <p>2 MR. GOLDRING: Right. It has the automatic date</p> <p>3 on it, so when it was printed, it automatically</p> <p>4 prints with today's date.</p> <p>5 MR. LANZILLO: Do we know the original date?</p> <p>6 MR. GOLDRING: It was April 21st, actually.</p> <p>7 MR. LANZILLO: Of '03.</p> <p>8 Q. With that correction -- and I thank counsel for</p> <p>9 that clarification -- have you ever seen Exhibit 2 prior to</p> <p>10 today, Mr. Housler?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. When is the first time you saw this</p> <p>13 document?</p> <p>14 A. I think I saw it when Mike was up at our</p> <p>15 institution, is the first time I saw it.</p> <p>16 Q. Did you see this document at any time in 2003?</p> <p>17 A. No. Not that I recall. I would have kept it in</p> <p>18 my file. It's not in my file.</p> <p>19 Q. Take a minute, if you would, and just review it to</p> <p>20 yourself, the substance, and I just want to ask you if you</p> <p>21 have any knowledge concerning the substance of the document.</p> <p>22 A. (Witness complies.) I really don't have a whole</p> <p>23 lot of knowledge on this documentation, no.</p> <p>24 Q. Let me just ask you one follow-up question or two</p> <p>25 follow-up questions here. There is a statement attributed</p>
<p style="text-align: right;">Page 42</p> <p>1 the end of the tie. So I said, okay, I'll go down and check</p> <p>2 it out, and he was right. So I twisted the ties around so</p> <p>3 they were pointing in, thus eliminating the inmate getting a</p> <p>4 chance of getting poked in the eye. That came from UNICOR.</p> <p>5 That's just a minor thing, but that's something.</p> <p>6 We're very proactive here in our -- in our safety</p> <p>7 program. If we get a complaint, we're going to check it</p> <p>8 out, and we're going to do whatever we have to, to correct</p> <p>9 it.</p> <p>10 (Discussion held off the record.)</p> <p>11 (Housler Deposition Exhibit 2</p> <p>12 marked for identification.)</p> <p>13 Q. Mr. Housler, I have handed you what we have marked</p> <p>14 as your Deposition Exhibit 2. It is a memo dated</p> <p>15 September 8, 2006 to Marty Sapko. Subject: Foreman Robin</p> <p>16 Bevevino; reply to Dave English.</p> <p>17 MR. COLVILLE: Let me just put an objection on the</p> <p>18 record with regard to the date of the memorandum.</p> <p>19 Just so we're -- I think there's an understanding</p> <p>20 that that is not the date this memorandum was</p> <p>21 prepared.</p> <p>22 MR. LANZILLO: You know, I was wondering about</p> <p>23 that.</p> <p>24 MR. GOLDRING: Yeah, what happened --</p> <p>25 MR. LANZILLO: Was it a typo, or was it when it</p>	<p style="text-align: right;">Page 44</p> <p>1 to Mr. Bevevino in the third paragraph of Exhibit 2 that</p> <p>2 states, "He," Bevevino, "said there is cancer-causing agents</p> <p>3 in the Micore board, and he is not going to tolerate it. He</p> <p>4 said, 'Just because I don't care about my health, he's not</p> <p>5 going to sit back and do nothing.' He then stated to me</p> <p>6 that --" well, it goes on.</p> <p>7 A. Um-hum.</p> <p>8 Q. Something about, "Stated to me that I have</p> <p>9 changed; what, did Debbie promise me a job where she was</p> <p>10 going, or what."</p> <p>11 A. I don't know anything about that; that job change</p> <p>12 or anything about where Debbie was going.</p> <p>13 Q. And what about the statements attributed to</p> <p>14 Mr. Bevevino regarding the Micore board? Did you have any</p> <p>15 knowledge of that?</p> <p>16 A. No. Mr. Bevevino never approached me as far as</p> <p>17 his concern with Micore board, if he did have a concern.</p> <p>18 Q. Did Mr. Sapko or Mr. English relate to you the</p> <p>19 substance of Mr. Bevevino's statements as recounted in</p> <p>20 Exhibit 2?</p> <p>21 A. No. I don't recall.</p> <p>22 Q. Not that you remember?</p> <p>23 A. Nope.</p> <p>24 MR. LANZILLO: Mr. Housler, those are all the</p> <p>25 questions I have. Thank you.</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MR. GOLDRING:</p> <p>3</p> <p>4 Q. Just a couple of points for clarification,</p> <p>5 Mr. Housler. You testified that the factory at McKean no</p> <p>6 longer produces wood products and furniture; it now produces</p> <p>7 plastics.</p> <p>8 A. Correct.</p> <p>9 Q. Do you know the reason that that change occurred?</p> <p>10 A. I think because of the distance we had to</p> <p>11 transport the wood and stuff, and it was more feasible for</p> <p>12 us to move -- where they moved it was to Florida. So it was</p> <p>13 much more feasible to move the woodworking operation to a</p> <p>14 Florida area.</p> <p>15 Q. Do you know if that decision had anything to do</p> <p>16 with any health or safety concerns in the factory?</p> <p>17 A. No, absolutely not. There was no concerns as far</p> <p>18 as health, safety. It was strictly a business move</p> <p>19 conducted by the Bureau of Prisons and UNICOR.</p> <p>20 Q. And do you know who made that decision?</p> <p>21 A. It came from UNICOR higher-ups and people at our</p> <p>22 factory. I know that. I can't give you an exact name, no.</p> <p>23 Q. But safe to say it was not a decision that was</p> <p>24 made by the administration at the factory itself or the</p> <p>25 staff at the factory itself.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Just as a clarification, did you also give that</p> <p>2 instruction to staff?</p> <p>3 A. Yeah, I give that to staff in -- when staff are</p> <p>4 first hired, we have a three-week class for staff. I make</p> <p>5 it very clear, if you have a problem, you get an injury,</p> <p>6 work-related injury, you need to report it to us</p> <p>7 immediately. And same with inmates. If they have an issue</p> <p>8 or a problem, they need to report it to me immediately.</p> <p>9 Once I investigate something, and if there's a</p> <p>10 problem, and I don't correct it, I tell them. I said, if</p> <p>11 it's not corrected, you can go to whoever you want then.</p> <p>12 Q. And was there a process in place or a program in</p> <p>13 place for staff to report any kind of a work-related injury</p> <p>14 to you?</p> <p>15 A. Yes. We have a -- a log, health hazard log in our</p> <p>16 office, where if there's any health hazards, any issues</p> <p>17 where a staff has, they can send us an e-mail, they can send</p> <p>18 us a memorandum, and we'll check it out. And we -- we have</p> <p>19 that log in our office for your review.</p> <p>20 Q. And have staff ever -- and not just in the UNICOR</p> <p>21 factory, but in the institution generally, have staff ever</p> <p>22 reported a work-related injury to you?</p> <p>23 A. Numerous, yes. I -- we get -- we average probably</p> <p>24 16 staff-related injuries a year, yes.</p> <p>25 Q. And were any of those staff members from the</p>
<p style="text-align: right;">Page 46</p> <p>1 A. At McKean?</p> <p>2 Q. Right.</p> <p>3 A. Absolutely not.</p> <p>4 Q. I wanted to ask you, there have been some comments</p> <p>5 made that inmates were using some kind of a pneumatic air</p> <p>6 system to blow dust off themselves or off some of the</p> <p>7 equipment. And you previously testified that you did not</p> <p>8 see any of that occurring. Is that correct?</p> <p>9 A. Well, I -- I -- they used -- I saw them using some</p> <p>10 dust [sic] underneath the equipment in hard-to-reach areas,</p> <p>11 yes, but as far as on top, no.</p> <p>12 Q. Okay. And not off of themselves?</p> <p>13 A. Nope.</p> <p>14 Q. If you had seen that occurring, what would you</p> <p>15 have done?</p> <p>16 A. I would have told them they need to quit doing</p> <p>17 that.</p> <p>18 Q. Okay. So this was not a practice which would have</p> <p>19 been approved by you as the safety manager.</p> <p>20 A. No.</p> <p>21 Q. And I wanted to ask you about the -- you testified</p> <p>22 that you instruct all of the inmates, if they have a health</p> <p>23 or safety concern, to immediately come to the safety office</p> <p>24 and report that concern.</p> <p>25 A. (Witness nods head.)</p>	<p style="text-align: right;">Page 48</p> <p>1 UNICOR factory?</p> <p>2 A. What period are you talking about?</p> <p>3 Q. Any period.</p> <p>4 A. Yeah. We've had -- we had one staff member injure</p> <p>5 a knee this year in UNICOR. So yes.</p> <p>6 Q. Okay. And of the staff from the UNICOR factory</p> <p>7 who have reported work-related injuries or complaints to</p> <p>8 you, did any of them relate to respiratory concerns or skin</p> <p>9 irritation or anything along those lines during the period</p> <p>10 of time that the UNICOR factory was working with Micore</p> <p>11 board?</p> <p>12 A. None. None whatsoever.</p> <p>13 Q. And I wanted to ask you a quick question about</p> <p>14 Mr. Bevevino.</p> <p>15 A. Um-hum.</p> <p>16 Q. You testified that he's currently on Workers'</p> <p>17 Compensation?</p> <p>18 A. Yes. He's been off some time.</p> <p>19 Q. What is the reason that he's on Workers'</p> <p>20 Compensation currently?</p> <p>21 A. He claimed a back injury.</p> <p>22 Q. Okay. And is that the only reason that he's ever</p> <p>23 been on Workers' Compensation?</p> <p>24 A. No. He's -- he's had numerous cases. He had a</p> <p>25 shoulder injury previous, another back injury. I can't</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 recall all the injuries he had, but his file is about six 2 inches thick. So he -- he's had a lot of injuries. 3 Q. And did any of the injuries that resulted in him 4 being in Workers' Comp., did any of them relate to 5 respiratory concerns or concerns relating to the Micore 6 board? 7 A. None whatsoever. I just want to say that when we 8 had our wood factory, I would put our wood factory, as far 9 as sanitation and cleanliness [sic], up against any 10 factory in the world. I mean, we have a captive audience 11 here, and we have all the labor we want, so our factory is 12 extremely clean. And there is no reason for it not to be 13 clean, because we -- if inmates aren't doing work, they are 14 cleaning down there. And if you compare our woodworking 15 factory, when we had the woodworking factory, to a factory 16 in the private sector, there's -- there is totally no -- 17 nothing to compare. You walk into a factory in the private 18 sector, there's dust piled up on the pipes, on the beams, on 19 the floor. You don't see that in our factory. Our factory 20 is highly sanitized. And I would bet my life on it; that 21 it's one of the cleanest -- was one of the cleanest 22 factories in the world. 23 Q. With that, let's talk about the OSHA inspection in 24 2003 for a minute. Did the OSHA inspectors themselves who 25 came in to look at the factory, did they make any verbal</p>	<p style="text-align: right;">Page 51</p> <p>1 (Housler Deposition Exhibit 3 2 marked for identification.) 3 Q. -- based on this document, what the levels of the 4 silica -- silica in the air were. 5 A. Okay. The -- the total that you read off the MSDS 6 is 15. If you take a look at the total particulate, it's 7 .54. Respirable silica on the saw operate [sic], it says 8 none detected. The feeder operator total particulate, 1.1. 9 The air sample, none detected for synthetic victarious [sic] 10 fiber. And when they did bulk samples for silica, it was 11 30 percent SVF and 20 percent silica. Router and shaper, 12 silica, none detected. Router and shaper operator, total 13 particulate, 1.50. Area sample, synthetic victorious [sic] 14 fibers, none detected. 15 Q. And are you familiar with what the allowable 16 levels of those particulates would be in the factory? 17 A. Yes. 18 Q. What would be allowed under OSHA regulations? 19 A. Anything under 15, permissible exposure limit, 20 off -- if you look at the Material Safety Data Sheet. 21 Q. And I want to turn to what was marked as Exhibit 22 1, which I believe was a section of the report that was 23 generated by OSHA. 24 A. I never saw this, just for the record. 25 Q. No, not this one.</p>
<p style="text-align: right;">Page 50</p> <p>1 comments to you about the quality of the air in the factory? 2 A. Well, the -- Mr. Clabaugh, who was the initial, 3 came in three times -- I think it was three times. I would 4 have to look at my -- he came in. He didn't make any 5 comments about it, but he did say we want to bring our 6 industrial hygienist in to do some air monitoring. So the 7 industrial hygienist came in -- let me see. They were in 8 June 17th and 18th doing the air monitoring. They were -- 9 spent the whole day the 17th. They came in the 18th, and 10 they did some -- they started doing some air monitoring. 11 They were doing some air monitoring. And the industrial 12 hygienist said, that's it, that's enough; I see no problems 13 here; we need to leave and finish this up and get out of 14 here. He said he saw no problems there. That was his 15 comment to me. 16 Q. Okay. And I'm going to show you -- this is -- can 17 you identify this document for me. 18 A. This is the document from OSHA; the results of the 19 air monitoring test. 20 MR. GOLDRING: You guys have that, right? 21 Q. And have you seen this document before? 22 A. Yeah, I have a copy of it right here (indicating). 23 Q. And can you tell me, based on that document -- 24 MR. GOLDRING: And we'll mark this -- I guess it 25 will be Exhibit 3.</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. GOLDRING: Oh, you didn't enter that into 2 evidence. I'm sorry. That was not Exhibit 1. 3 Q. Mr. Lanzillo read from a part of the OSHA report. 4 I'm just going to flip to a page he was reading from. He 5 referred to OSHA, Citation No. 2, Items 1 and 3. And if you 6 could look at -- 7 MR. GOLDRING: And I guess this would be Exhibit 8 4, then. 9 (Housler Deposition Exhibit 4 10 marked for identification.) 11 Q. -- where it says Type of Violation, can you read 12 what it says there. 13 A. "Employees who wear --" 14 Q. No. Up where it says Type of Violation. 15 A. "Other". "Other". 16 Q. And are there different kinds of -- types of 17 violations that OSHA could come in and reference? 18 A. Yes. 19 Q. What else could have been written there? 20 A. Serious, willful. 21 Q. So the fact that that says "other", does that 22 imply to you that this was a nonserious violation? 23 A. Yes. 24 Q. What does that mean, if it was a nonserious 25 violation?</p>

<p style="text-align: right;">Page 53</p> <p>1 MR. LANZILLO: Objection to form on the last</p> <p>2 question.</p> <p>3 Q. What do you understand other to mean?</p> <p>4 A. "Other" would mean that other -- that it may fall</p> <p>5 under the general duty clause OSHA has. It may be just a</p> <p>6 recommendation. They -- they may make a recommendation that</p> <p>7 you do something to make the protection better than it is.</p> <p>8 Q. Okay.</p> <p>9 A. So that would fall under "other".</p> <p>10 Q. Okay. Were any of the items noted by OSHA, were</p> <p>11 any of them termed serious?</p> <p>12 A. I -- I can't remember. I'd have to look.</p> <p>13 Q. Were any of them termed anything other than other?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. Yes.</p> <p>17 Q. And did any of those relate to the air quality in</p> <p>18 the factory, if you remember?</p> <p>19 A. I can't recall.</p> <p>20 Q. Okay. When you testified about having Microbac</p> <p>21 Labs come in -- and I just wanted to ask you about a</p> <p>22 statement that you made -- you testified that it was a</p> <p>23 struggle to have them come in, and eventually they -- they</p> <p>24 agreed to have Microbac come in, and you testified that they</p> <p>25 should have done that from the beginning.</p>	<p style="text-align: right;">Page 55</p> <p>1 A. No.</p> <p>2 MR. COLVILLE: That's all I have.</p> <p>3 MR. LANZILLO: Just a couple of follow-up.</p> <p>4</p> <p>5 REDIRECT EXAMINATION</p> <p>6 BY MR. LANZILLO:</p> <p>7</p> <p>8 Q. Regarding cleaning procedures, was there any</p> <p>9 change in the procedures after the OSHA inspection?</p> <p>10 A. OSHA made some recommendations. There was</p> <p>11 approximately seven of them. And with the recommendation,</p> <p>12 that doesn't mean you have to do it or you have to take</p> <p>13 corrective action that they recommend. When they made the</p> <p>14 recommendations, we -- we went ahead and we did what all</p> <p>15 their recommendations were. I have them here. I can read</p> <p>16 them to you, if you want me to.</p> <p>17 Q. Well, I just was wondering in terms of the</p> <p>18 cleaning procedure.</p> <p>19 A. The cleanup? They recommended that we only use</p> <p>20 Shop-Vacs for cleaning up. And they also recommended that</p> <p>21 in order to make sure it was done properly, we don't do any</p> <p>22 sweeping.</p> <p>23 Q. And was -- was that change made?</p> <p>24 A. Yes. All the recommendations they recommended, we</p> <p>25 did.</p>
<p style="text-align: right;">Page 54</p> <p>1 A. (Witness nods head.)</p> <p>2 Q. What exactly did you mean, they should have done</p> <p>3 that from the beginning?</p> <p>4 A. When we received the complaint, the first initial</p> <p>5 complaint, my recommendation was we immediately bring --</p> <p>6 because you only have so many days to respond to the OSHA</p> <p>7 citation or complaint. So I recommended we get them in</p> <p>8 immediately to do the air monitoring so we could get the</p> <p>9 results back and get them up to the OSHA office for our</p> <p>10 response.</p> <p>11 Q. Okay. So just to make sure I'm clear, what you</p> <p>12 meant by that statement was that you should have had</p> <p>13 Microbac come in as soon as the complaint was brought to</p> <p>14 your attention.</p> <p>15 A. Correct.</p> <p>16 MR. GOLDRING: That's all I have.</p> <p>17 MR. COLVILLE: Just a couple questions.</p> <p>18</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. COLVILLE:</p> <p>21</p> <p>22 Q. You talked a lot about Micore board, and Lokweld</p> <p>23 was mentioned. Did any inmate or staff member come to you</p> <p>24 and tell you that they thought they were getting sick</p> <p>25 because they were using or working around Lokweld?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. In response to one of Mr. Goldring's questions,</p> <p>2 you testified that if you had observed an inmate using a</p> <p>3 pneumatic air pressure hose to blow dust off of clothing,</p> <p>4 you would have prohibited that --</p> <p>5 A. Yes.</p> <p>6 Q. -- practice.</p> <p>7 A. Yes.</p> <p>8 Q. And why is that?</p> <p>9 A. I think it's dangerous. You can blow something up</p> <p>10 into your face, into your eye. If something gets -- would</p> <p>11 be caught in the end of it, it could possibly blow through</p> <p>12 their clothes, puncture their skin, or injure them.</p> <p>13 Q. Were there any policies in place regarding that --</p> <p>14 that type of action during your tenure as --</p> <p>15 A. No.</p> <p>16 Q. -- safety manager?</p> <p>17 A. No.</p> <p>18 Q. Between the date of the complaint, the first OSHA</p> <p>19 complaint in 2001 and the OSHA inspection in April of 2003,</p> <p>20 am I correct that you did not review the MSDS for Micore</p> <p>21 board?</p> <p>22 A. Correct.</p> <p>23 MR. LANZILLO: That's all.</p> <p>24</p> <p>25 RECROSS-EXAMINATION</p>

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1 BY MR. COLVILLE:

2

3 Q. About the recommendations that you mentioned, were  
4 these -- it was my understanding these recommendations were  
5 separate and aside from the citations listed in the formal  
6 report by OSHA. Is that accurate?

7 A. Right. Correct.

8 Q. Now, these recommendations, are you required to  
9 implement them?

10 A. No. They are just a recommendation.

11 Q. Why did you implement them, if they are not  
12 required to be implemented?

13 A. Well, number one, coming from OSHA, when they --  
14 when they -- when they recommend something, it's wise to  
15 take their advice and do what they do [sic]. You know,  
16 they -- they are the -- they are the experts, and they know  
17 what they are doing.

18 Q. Okay. Now, with regard to the citation itself,  
19 all of the citations, after you received these citations,  
20 did you or did the prison take corrective actions on all or  
21 some of the cited areas?

22 A. I -- I took corrective action. I had to review  
23 them. I had to write a response to OSHA and send it in. So  
24 I had to make sure all the corrective action was taken.

25 Q. Was there any citation that wasn't corrected --

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1 A. No.

2 Q. -- after the OSHA report?

3 A. No. They all were corrected. There was a couple  
4 of them that we -- that took a little time to get corrected.  
5 But when I sent a letter to OSHA, I identified those ones.  
6 And once we corrected them, we notified them that they had  
7 been corrected.

8 Q. Was there any area that OSHA may have cited and  
9 you just disagreed with them; you said, you know what, they  
10 are wrong, we're not going to do what they cited us for?

11 A. No. No. Anything they recommended or cited us  
12 for, we -- we took corrective action.

13 Q. And how soon after are we talking?

14 A. Some of them were corrected immediately, as I  
15 said. And others -- others, we had to do some -- for  
16 instance, they recommended that on one of our -- our garbage  
17 collectors, that we weld a top on it and hook the  
18 dust-collecting system into that. That -- that took a few  
19 days to get done. I can't remember what the other ones  
20 were.

21 MR. COLVILLE: That's all I have. Thank you.

22 (Discussion held off the record.)

23 MR. COLVILLE: Signature waived.

24

25 (Deposition concluded at 11:37 a.m.)

15 (Pages 57 to 58)

<p><b>A</b></p> <p><b>about</b> 7:20 9:22,23 10:5 11:6 14:12,14 14:16 15:19,24 21:25 22:11,24 23:10 26:25 28:1,2,5,7,9,11 29:12 38:3,7 42:22 44:4,8 44:11,12,13 46:21 48:2,13 49:1,23 50:1 50:5 53:20,21 54:22 57:3</p> <p><b>above</b> 37:18</p> <p><b>absolutely</b> 36:20 41:2 45:17 46:3</p> <p><b>accommodate</b> 38:17</p> <p><b>accurate</b> 21:11 57:6</p> <p><b>action</b> 55:13 56:14 57:22,24 58:12</p> <p><b>actions</b> 3:10 57:20</p> <p><b>actually</b> 5:17 12:24 31:19 36:9 43:6</p> <p><b>addition</b> 4:6</p> <p><b>administration</b> 45:24</p> <p><b>advice</b> 57:15</p> <p><b>advisory</b> 32:1</p> <p><b>affirmative</b> 4:9</p> <p><b>after</b> 16:25 17:2 18:22 30:7 34:4 55:9 57:19 58:2,13</p> <p><b>again</b> 17:20</p> <p><b>against</b> 33:16 49:9</p> <p><b>agents</b> 44:2</p> <p><b>ago</b> 11:7</p> <p><b>agreed</b> 53:24</p> <p><b>ahead</b> 38:13 55:14</p> <p><b>air</b> 7:2,4 19:7 22:8 27:8 27:9,12 32:15,18 33:1,3,7,8,14,17,23 34:15,17,19,24 36:15 36:23 37:14,17 46:5 50:1,6,8,10,11,19 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